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NOTICE OF MOTION AND RELIEF REQUESTED**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on December 16, 2003, at 9:30 a.m. in Courtroom 11, of the above-entitled court, Plaintiff Ricoh Company, Ltd. ("Ricoh"), will and hereby does move the Court for an order compelling Defendants Aeroflex Incorporated ("Aeroflex"), AMI Semiconductor, Inc. ("AMI"), Matrox Electronic Systems Ltd. ("Matrox"), Matrox Graphics Inc. ("Matrox Graphics"), Matrox Int'l. Corp. ("Matrox Int'l.") and Matrox Tech Inc. ("Matrox Tech") (collectively the "ASIC Defendants") to provide responsive and complete answers to Plaintiff Ricoh's First Set of Interrogatories.

Ricoh bases this motion upon the following Memorandum of Points and Authorities, the accompanying declaration and exhibits, all pleadings on file in this case, and such argument as may be heard by this Court.

MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

In this motion, Plaintiff, Ricoh Corporation, Ltd., seeks to compel each of the ASIC Defendants to provide answers responsive to Plaintiff's First Set of Interrogatories. Over the last six months, Defendants have provided no substantive responses and they have given no indication that they intend to. Defendants refused to produce information regarding their production of the products at issue, claiming it is confidential (even though a protective order is in place). Defendants refused to produce information regarding their use of Design Compiler, claiming that only Synopsys can produce that information. When subpoenaed for those documents, Synopsys claims that Ricoh should get the documents from the ASIC Defendants.

This matter originated in the District of Delaware, when Plaintiff Ricoh sued a number of computer chip manufacturers for patent infringement. The patent in suit has claims directed to a computer aided design process for making an application specific integrated circuit (ASIC). In May

1 2003 Ricoh served each of the ASIC Defendants with identical interrogatories. The ASIC Defendants
2 stonewalled and refused to provide substantive responses. On August 28, 2003, Judge Sleet of the
3 District of Delaware held a two hour hearing on Ricoh's motion to compel in which he repeatedly
4 chastised defendants' counsel over the very issues that are the subject of this motion, and ordered the
5 resolution of all discovery matters by September 5, 2003. Defendants have simply ignored Judge Sleet's
6 orders, perhaps hoping this Court will not hold them accountable for their months of discovery delays.
7 This Court must put an immediate end to defendants' interminable delays and order the immediate
8 response to Plaintiff's interrogatories.
9

10 BACKGROUND

11 Ricoh served all Defendants with identical First Sets of Interrogatories on May 30, 2003.
12 (Ex. 1). The answers to all interrogatories were substantially identical among all Defendants, except
13 where the Matrox Defendants¹ further denied they did any work in the United States and therefore did
14 not have to reply to Plaintiff's interrogatories. (Ex. 2-7). Defendants have refused to provide answers
15 responsive to most Interrogatories or have simply refused to provide any substantive answer. Plaintiff
16 has repeatedly attempted to resolve any disputes with Defendants regarding these discovery issues to no
17 avail. On August 11, 2003, Plaintiff's counsel sent a letter to Defendants' counsel regarding the answers
18 to Plaintiff's Interrogatories and attempting to come to a resolution on the issues. (Ex. 8, 8/11/03 E.
19 Meilman letter to C. Kelley). Plaintiff's counsel further agreed to limit the definition of ASIC products
20 and to accept the identification of five individuals with the greatest knowledge about each category.
21 (Ex. 9, 8/26/03 E. Meilman letter to E. Moller). However, the defendants still did not produce
22 responsive answers even within Ricoh's narrowed parameters. Therefore, the Plaintiff addressed these
23 issues in a hearing before Judge Sleet in the transferring court, the District of Delaware.
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28 ¹ The "Matrox Defendants" include Matrox Electronics Systems, Ltd., Matrox Graphics Inc., Matrox International Corp. and Matrox Tech, Inc.

On August 28, 2003, Judge Sleet held a two hour hearing in which he repeatedly chastised defendants' counsel over the very issues that are the subject of this motion, and ordered the resolution of all discovery matters by September 5, 2003. (Exhibit 10, 8/28/03 Tr. at p 61, lines 13-24). Part of the hearing related to resolving the discovery disputes regarding the retention of an expert witness- Dr. Donald Thomas. The court required Howrey to produce to the court all internal documents of Howrey during a 34 day period that make reference to Dr. Thomas excluding any internal communications from Howrey in preparation for the conference call with the Court on July 30. (Exhibit 10, 8/28/03 Tr. at p 29, line 22- page 32, line 24). These documents have not been produced. Defendants filed a Notice to this court on October 30, 2003 attempting to alleviate themselves of obligations to produce documents relating to Dr. Thomas. (Ex. 12, Defendants' Notice to Court) Defendants are now trying to obviate their obligations now that the case is no longer pending in front of Judge Sleet.

The court also addressed difficulties related to discovery requests for interrogatories and document requests. The court guided the parties to an apparent meeting of the minds regarding the breadth of the responses requested. The court then ordered that counsel for the Synopsys and the defendants work diligently over the next week, so that Ricoh can receive the documents and further, that the defendants and Synopsys produce documents that are confidential under the protection and guide of the protective order. (Exhibit 10, 8/28/03 Tr. at p 61, line 11- p. 62, line 2).

Defendants have simply ignored Judge Sleet's orders, perhaps hoping this Court will not hold them accountable for their months of Delaware discovery delays. This Court must put an immediate end to defendants' interminable delays and order the defendants' to immediately provide responsive answers.

ARGUMENT

I. DEFENDANTS SHOULD BE COMPELLED TO PROVIDE MORE RESPONSIVE ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Plaintiff's Interrogatories and Defendants' Responses are substantially reproduced below, except where redundant and are grouped together where responses were identical.

A. Defendants' General Objections Are Not Valid

Each and every Interrogatory was objected to by Defendants in a statement which incorporates by reference each and every one of fourteen (14) numbered objections set forth under the heading "General Objections." (Ex.2-7, pp. 2-4.) Such a "blanket" approach is effectively not an objection at all. *Walker v. Lakewood Condominium Owners Association*, 186 F.R.D. 584, 587 (C.D. Cal. 1999). General objections 1-3 claim a blanket attorney client privilege and protection under the work product doctrine. However, Defendants have failed to provide a privilege log to document which answers or documents would be protected under attorney client privilege or the work product doctrine.

General Objection No. 4 asserts that information is confidential to a third party, which is not a valid reason to object. The burden is on the defendants to seek protection from the Court. Nevertheless, in an August 11 letter, Ricoh offered to accept an identification of any third party (other than Synopsys) involved as well as a sufficient identification of any involved documents to identify the documents in a document subpoena in lieu of actual production of the document, provided Defendants advise Plaintiffs of agreement to do so and Plaintiff was given such material before August 20, 2003. (Ex. 8, E. Meilman 8/11/03 letter.) No response to that offer was ever made. As to Synopsys, it is by its own admissions already involved in this case and the defendants cannot hide behind any alleged requirement for its consent.

General Objection 5 is not valid in that only information and documents relevant to the issues in this case have been sought. General Objection 6 is not valid because a reasonable search is all that is required. General Objection 7 is not valid. The fact that documents may be obtainable from some other source does not excuse production of those documents. See, e.g., *Heat & Control, Inc. v. Hester Industries, Inc.*, 785 F.2d 1017, 1024-25 (Fed. Cir. 1986). General Objection 8 is invalid because Plaintiff only seeks information or documents in the possession, custody or control of defendants.

As to General Objection 9, Plaintiffs offered to limit the time frame as being from 1996 to the present unless the document relates to prior art (Ex. 8, E. Meilman 8/11/03 to C. Kelley.) For prior

1 art documents, this objection is not valid. Aeroflex and AMI General Objections 10 and 11 (and the
2 corresponding Matrox General Objections 13 and 14) are unfounded. No request seeks a legal
3 conclusion or go beyond the Federal Rules or the Local Rules (then Delaware and now this Court).

4 Aeroflex and AMI General Objection 12 (and the corresponding Matrox General Objection
5 15) is invalid since the interrogatories advanced fully comply with Rule 33(a) of the Federal Rules.

6 With regard to Aeroflex and AMI General Objection 13 (and the corresponding Matrox
7 General Objection 16) as to duplicative requests, Plaintiff agreed that any given document need only be
8 produced once and the Defendants can incorporate other interrogatory answers by reference.

9 Aeroflex and AMI General Objection 14 (and the corresponding Matrox General Objections
10 12 and 17) are invalid. Discovery of defendants' positions is one of the very purposes of discovery. As
11 to the Matrox General Objections 10 and 11 based on foreign activity, the provisions of 35 U.S.C. §
12 271(g) make those objections invalid.

13
14 **B. The Matrox Defendants' Refusal To Engage In Discovery Is Improper**

15 In addition to the foregoing general objections, Matrox Defendants also have refused to
16 provide any responsive answers based on their assertion that since they are based in Canada, their
17 activities "could not constitute infringement, under any provision of 35 U.S.C. § 271, of a United States
18 patent." This objection is without merit for three reasons. First, Matrox Tech, Inc. has a plant and is
19 doing work in Florida, as their counsel conceded. (Ex. 10, 8/28/03 Tr. at p. 67, lines 7-15). Second, the
20 Matrox Defendants apparently believe they are entitled to summary judgment and so should be excluded
21 from any discovery obligation. There is no basis for the Matrox defendants to avoid responding to
22 relevant discovery because they may eventually file a summary judgment motion sometime in the
23 future. Third, this issue has already been resolved by Judge Sleet. In the August 28 hearing, the Matrox
24 defendants sought the court's leave to file a motion for summary judgment. The court refused to address
25 the issue of the premature summary judgment and then subsequently deferred ruling on it. (Ex. 10,
26 8/28/03 Tr. at p.62, line 6, - page 68, line 4). The court later indicated that discovery of the Canadian
27 Matrox defendants should only be deferred for a "brief period of time" before proceeding in discovery
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process against them. (Ex. 10, 8/28/03 Tr. at p. 66 line 24 – page 67, line 16). Therefore, the Canadian Matrox defendants are not removed from responsibility simply because they are located outside the United States.

C. Defendants' Specific Objections To Definitions & Instructions Are Not Valid

Defendants have advanced some specific objections to the definition section of the interrogatories (Ex. 2-7). None are valid. Defendants' Specific Objection 1 to Definition/Instruction No. 5, is on the grounds that the term "defendant" includes people other than present employees and agents. However, if such people are under the control of defendant, there is no reason to exclude them. The objection is not valid.

Specific Objection 2 asserts that the information to be included on a privilege log imposes obligations beyond those imposed by the Federal or local rules. The information requested by Plaintiff's Interrogatories and delineated in Plaintiff's Definition/Instruction 11 does not impose any obligations beyond those imposed by Federal or local rules and is designed to provide sufficient information to determine if the claim of privilege is valid or subject to challenge. The Court deciding *In re Imperial* stated that where a privilege was asserted, "the party asserting the privilege must make a prima facie showing that the privilege protects the information it intends to withhold." *In re Imperial Corp. of America*, 174 F.R.D. 475, 477-478 (S.D. Cal. 1997) (citing *In re Grand Jury Investigation*, 974 F.2d 1068 (9th Cir. 1992)). A privilege log "must expressly claim the privilege and describe the nature of the documents or communications in a manner that will enable other parties to assess the applicability of the privilege or protection. Failure to do so may constitute an 'implied' waiver of the privilege or protection." *Id.* at 477, citing *Clarke v. American Commercial National Bank*, 974 F.2d 127, 129 (9th Cir. 1992). Defendants are required to assert privileges properly and as yet, have failed to do so.

Moreover, such generalized objections are not proper. See *Walker v. Lakewood Condominium Owners Assoc.*, 186 F.R.D. 584, 587 (C.D. Cal. 1999) (a "[b]oilerplate, generalized objection that . . . [was] inadequate and tantamount to not making any objection at all." An objection to

1 discovery request as being "overly broad, burdensome, oppressive and irrelevant is not adequate to voice
2 a successful objection") (citing *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir. 1982); *Redland*
3 *Soccer Club, Inc. v. Department of the Army*, 55 F.3d 827, 856 (3d Cir. 1995) ("the mere statement by a
4 party that the interrogatory was overly broad, burdensome, oppressive and irrelevant is not adequate to
5 voice a successful objection to an interrogatory") (citing *Josephs*, 677 F.2d at 992 (3d Cir. 1982)).
6 Instead, "the party resisting discovery must show specifically how each interrogatory is not relevant or
7 how each question is overly broad, burdensome or oppressive." *Josephs*, 677 F.2d at 992 (citations,
8 internal ellipses and internal quotations omitted).
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10 Turning to the Specific Objections 3-5 to Definition/Instructions 14-16, the definitions are
11 proper. ASIC is defined based upon the definition of an ASIC found in column 1 of the patent-in-suit,
12 the definition of "ASIC Product" is similar to and incorporates the definition of an ASIC, as does the
13 definition of ASIC Method which is also tied to computer-aided design of ASICs. The definitions are
14 appropriate and they are not overly broad in light of the patent-in-suit. At a minimum, the definitions
15 cover the defendants' use of Design Compiler and Behavior Compiler.

16 Defendants' objection 4 is as follows:

17 Defendant objects to Ricoh's Definition/Instruction 15 to the extent that the definition of
18 "ASIC PRODUCT" is vague, overly broad, unduly burdensome and not reasonably
19 calculated to lead to the discovery of admissible evidence.

20 This objection is invalid because Plaintiff has agreed to define "ASIC Product" as "the
21 product of a computer aided design process involving logic synthesis." (Ex. 11, E. Meilman letter
22 9/4/03) Defendants indicated that their remaining objections to Plaintiff's discovery requests would be
23 resolved by use of this definition. (Ex. 11, E. Meilman 9/4/03 letter and 8/28/03 Tr. p. 57 lines 12-18).
24 However, Plaintiff has yet to receive any answers that are responsive to Plaintiff's First Set of
25 Interrogatories.

26 Defendant Matrox Tech has avoided providing answers to many of the Interrogatories on the
27 grounds that it "has ceased operations." That is not a valid ground to refuse to provide information.
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Also, it is not conceivable that only one or two individuals have information in the limited number of the categories requesting names where the question was not ignored. Defendant Matrox Tech. should be compelled to provide full and complete answers. Those responses should also indicate that date when it ceased operations and the current custodian of any records.

D. Defendants' Responses To Plaintiff's First Set Of Interrogatories Are Not Valid

According to Fed. R. Civ. P. 33 (b)(1), "[e]ach interrogatory shall be answered separately and fully" and Fed. R. Civ. P. 33 (b)(4) states "[a]ll grounds for objection to an interrogatory shall be stated with specificity." Defendants have included the phrase "Defendant incorporates by reference its General and Specific Objections" in each Response below. As discussed above, Defendants' General Objections are invalid and unfounded. Defendants have not provided responsive interrogatory answers nor have they provided specific objections that comply with the Federal Rules. In addition, Defendants, although they make a number of blanket privilege or work product objections, have yet to produce a privilege log. Defendants have to date, refused to provide responsive answers, even after the transferring court's clear orders to do so. Each Interrogatory and Response is discussed below.

1. Interrogatory No. 1: Defendants' Corporate Structure

Interrogatory No. 1: Describe the organizational structure of defendant, including, but not limited to those groups, divisions, teams and other organizations having any involvement in defendant's ASIC Method at any time, and identify all individuals who can testify about such organization.

Response to Interrogatory No. 1: Defendant incorporates by reference its General Objections. Defendant further objects to this interrogatory as unduly burdensome and on the basis that it seeks detailed discovery regarding operations of Defendant that have no relevance to Defendant's ASIC Products or Methods. Subject to and without waiving the foregoing general and specific objections, Defendant responds as follows:

Pursuant to FRCP Rule 33(d), Defendant will produce non-privileged business records for organizational structure that are responsive to this interrogatory and contain the requested information to the extent such records currently exist within Defendant's possession, custody or control.

(Ex. 2-7.)

1 Production of documents under Fed. R. Civ. P. 33(d) as a response to an Interrogatory is not
2 proper unless a “specification shall be in sufficient detail to permit the interrogating party to locate and
3 to identify, as readily as can the party served, the records from which the answer may be ascertained.”
4 Defendants are required to provide specific details as to where the records may be found. Defendants
5 have provided no specification as to where its business records may be identified or found by the
6 Plaintiff. It is inappropriate for a party to avoid providing a responsive answer by citing to Fed. R. Civ.
7 P. 33(d) and then not provide any documents pursuant with Rule 33(d). *The Walt Disney Company v.*
8 *Sean Paul DeFabiis*, 168 F.R.D. 281 at 284 (C.D. Cal. 1996).

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10 Furthermore, the Advisory Committee notes to Fed. R. Civ. P. 33(b)(1) state in part “if, for
11 example, an interrogatory seeking information about numerous facilities or products is deemed
12 objectionable, but an interrogatory seeking information about a lesser number of facilities or products
13 would not have been objectionable, the interrogatory should be answered with respect to the latter even
14 though an objection is raised as to the balance of the facilities or products.” Defendants have yet to
15 provide a more responsive answer to Interrogatory No. 1 or an answer in the proper form.

16 Interrogatory No. 1 is relevant to Plaintiff’s claim. Relevancy is construed broadly and
17 includes information “reasonably calculated to lead to the discovery of admissible evidence.” Fed. R.
18 Civ. P. 26(b)(1) Courts have construed relevancy “liberally and with common sense’ and discovery
19 should be allowed unless the information sought has no conceivable bearing on the case.” *Soto v. City of*
20 *Concord*, 162 F.R.D. 603, 610 (N.D. Cal. 1995), quoting *Miller v. Pancucci*, 141 F.R.D. 292, 296 (C.D.
21 Cal. 1992). The information sought by the Plaintiff in Interrogatory No. 1 has bearing on the case. The
22 corporate structure of the Defendants is directly relevant to the determination of whether the ASIC
23 Products or Methods are infringing. In addition, Interrogatory No. 1 seeks to identify key players and
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reporting relationships between the entities. Defendants should be compelled to provide a responsive answer to Interrogatory No. 1.²

2. Interrogatory No. 2: Manufacture or sale of ASIC Products

Interrogatory No. 2: Identify each and every ASIC Product designed, manufactured, sold, offered for sale, imported, or distributed by or on behalf of defendant, and separately identify for each product any and all order numbers, product numbers, trade names, trade designations, trademarks, common names, model numbers, version numbers, internal code or project names, catalog numbers, and any other designations used by defendant (whether or not known to third parties) in connection with that product, including indicating whether the manufacture, offer for sale, or importation of that product is presently continuing, and if not, indicating the date of termination thereof.

Response to Interrogatory No. 2: (by AMI and Aeroflex) Defendant incorporates by reference its General Objections. Defendant further objects to this interrogatory on the basis that it is unduly burdensome, seeks discovery regarding semiconductor products having no relationship to any infringement allegations made by Ricoh against Defendant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendant designs and manufactures a large number of products. Plaintiff has not identified any theory of infringement or which specific design step(s) or activities are relevant to its allegations of infringement, or what activities Plaintiff considered during the reasonable pre-filing investigation, if any, that it conducted prior to filing the present lawsuit. To answer the interrogatory as drafted, therefore, might require the identification of every product manufactured by Defendant that includes an integrated circuit. (Ex. 2, 3)

Response to Interrogatory No. 2: (by Matrox Elec.) Defendant incorporates by reference its General and Specific Objections. Defendant further objects to this interrogatory on the basis that it is unduly burdensome, seeks discovery regarding semiconductor products having no relationship to any infringement allegations made by Ricoh against Defendant, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing general and specific objections, Defendant responds as follows: Defendant does not design, make, use, offer to sell, sell, or import any products within the United States. (Ex. 4).

Response to Interrogatory No. 2: (by Matrox Graphics) Defendant incorporates by reference its General and Specific Objections. Defendant further objects to this interrogatory on the basis that it is unduly burdensome and seeking discovery of information regarding design processes that have no relationship to ASIC design and are not reasonably calculated to lead to the discovery of

² Defendants have produced a trivial amount of documents that may be assumed to be responsive to this request. Defendant AMI Semiconductor Inc. produced several organizational charts, Matrox Graphics produced a listing of projects with team members, and Matrox Tech produced a few documents suggesting the company is closing.

1 admissible evidence. Defendant designs and manufactures a large number of products and
2 employs, and has employed, a large number of engineers involved in product design. Plaintiff
3 has not identified any theory of infringement or which specific design step(s) or activities are
4 relevant to its allegations of infringement, or what activities Plaintiff considered during the
5 reasonable pre-filing investigation, if any, that it conducted prior to filing the present lawsuit. To
6 answer the interrogatory as drafted, therefore, might require a narrative describing every design
7 step performed by every employee who had any involvement in the design work on any product
8 that includes an integrated circuit. Defendant further objects that the design work for its
9 products, including the design work on Defendant's ASICs, performed at Defendant's facilities
10 in Canada is not relevant to Plaintiff's allegations of infringement. Design of ASICs or other
11 electronic systems and devices done in Canada could not constitute infringement under any
12 provision of 35 U.S.C. § 271, of a United States Patent. Subject to and without waiving the
13 foregoing general and specific objections, Defendant responds as follows: Defendant does no
14 engineering design work in the United States. (Ex. 5).

9 Response to Interrogatory No. 2: (by Matrox Int'l) Defendant incorporates by reference its
10 General and Specific Objections. Defendant further objects to this interrogatory on the basis that
11 it is unduly burdensome and seeking discovery of information regarding semiconductor products
12 having no relationship to any infringement allegations made by Ricoh against Defendant, and not
13 reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects
14 to this interrogatory as overly broad and unduly burdensome on the grounds that Defendant sells
15 a large number of products. Ricoh has not identified any theory of infringement or which
16 specific design step(s) or activities are relevant to its allegations of infringement, or what
17 activities Ricoh considered during the reasonable pre-filing investigation, if any, that it
18 conducted prior to filing the present lawsuit. To answer the interrogatory as drafted, therefore,
19 would require examination and identification of a large number of products. Subject to and
20 without waiving the foregoing general and specific objections, Defendant responds as follows:
21 In light of the foregoing objections, Defendant will not respond to this interrogatory. (Ex. 6).

17 Response to Interrogatory No. 2: (by Matrox Tech.) Defendant incorporates by reference its
18 General and Specific Objections. Defendant further objects to this interrogatory on the basis that
19 it is unduly burdensome, seeks discovery regarding semiconductor products having no
20 relationship to any infringement allegations made by Ricoh against Defendant, and not
21 reasonably calculated to lead to the discovery of admissible evidence. Subject to and without
22 waiving the foregoing general and specific objections, Defendant responds as follows:
23 Defendant has ceased operations (Ex. 7).

22 Interrogatory 2 is proper and the objections made are not valid. Ricoh is entitled to know
23 what ASIC Products Defendants the have designed, manufactured, sold, offered for sale, imported, or
24 were distributed by or on behalf of Defendants. This information is directly relevant to Plaintiff's
25 allegations of infringement. While Ricoh has not asserted that any particular equipment constitutes
26 patent infringement, what equipment the defendants have and what the defendants do with such
27 equipment is relevant to a determination of whether or not there is patent infringement. The additional
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objection by the Matrox defendants based on work in Canada is invalid because 35 U.S.C. § 271(g) explicitly contemplates activity outside the U.S. constituting patent infringement.

The objection that the Interrogatory is too broad is invalid in light of Ricoh narrowing the definition of certain key terms. In August, Ricoh's counsel agreed to limit the definition of ASIC Products. (Ex. 9, 8/26/03 E. Meilman letter to E. Moller). Key discovery terms were further discussed during the August 28, 2003 hearing. (Exhibit 10, 8/28/03 Tr.) The objection from Matrox that it has ceased operations is not valid because even if true Ricoh is entitled to know what products were made by the defendant and what design methods were used by the defendant.

3. Interrogatory No. 3: ASIC Methods

Interrogatory No. 3: Separately for each product identified in answer to Interrogatory No. 2, describe with specificity and particularity all of the steps or other activities making up the ASIC Method used to design that product, including the date(s) such steps or other activity occurred, and where such step or activity is not performed by defendant, identify the person performing such step or activity.

Response to Interrogatory No. 3: (by Aeroflex and AMI) Defendant incorporates by reference its General Objections. Defendant further objects to this interrogatory as unduly burdensome and seeking discovery of information regarding design processes that have no relationship to ASIC design and are not reasonably calculated to lead to the discovery of admissible evidence. Defendant designs and manufactures a large number of products and employs a large number of personnel involved in product design. Plaintiff has not identified any theory of infringement or which specific design step(s) or activities are relevant to its allegations of infringement, or what activities Plaintiff considered during the reasonable pre-filing investigation, if any, that it conducted prior to filing the present lawsuit. To answer the interrogatory as drafted, therefore, might require a narrative describing every design step performed by every employee who had any involvement in design work on any product that includes an integrated circuit. (Ex. 2, 3).

Response to Interrogatory No. 3: (Similar responses by Matrox Elec., Matrox Graphics) Defendant incorporates by reference its General and Specific Objections. Defendant further objects to this interrogatory as unduly burdensome and seeking discovery of information regarding design processes that have no relationship to ASIC design and are not reasonably calculated to lead to the discovery of admissible evidence. Defendant designs and manufactures a large number of products and employs a large number of personnel involved in product design. Plaintiff has not identified any theory of infringement or which specific design step(s) or activities are relevant to its allegations of infringement, or what activities Plaintiff considered during the reasonable pre-filing investigation, if any, that it conducted prior to filing the present lawsuit. To answer the interrogatory as drafted, therefore, might require a narrative describing every design step performed by every employee who had any involvement in design work on any product that includes an integrated circuit.

Defendant further objects that the design work for its products, including the design work on Defendant's ASICs, performed at Defendant's facilities in Canada is not relevant to Ricoh's

1 allegation of infringement. Design of ASICs or other electronic systems and devices done in
2 Canada could not constitute infringement under any provision of 35 U.S.C. § 271, of a United
3 States Patent. Subject to and without waiving the foregoing general and specific objections,
4 Defendant responds as follows: Defendant does no engineering design work in the United
5 States. (Ex. 4, 5)

6 Response to Interrogatory No. 3: (by Matrox Int'l) Defendant incorporates by reference its
7 General and Specific Objections. Defendant further objects to this interrogatory as unduly
8 burdensome and seeking discovery of information regarding semiconductor products having no
9 relationship to any infringement allegations made by Ricoh against Defendant, and not
10 reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects
11 to this interrogatory as overly broad and unduly burdensome on the grounds that Defendant sells
12 a large number of products. Plaintiff has not identified any theory of infringement or which
13 specific design step(s) or activities are relevant to its allegations of infringement, or what
14 activities Plaintiff considered during the reasonable pre-filing investigation, if any, that it
15 conducted prior to filing the present lawsuit. To answer the interrogatory as drafted, therefore,
16 would require examination and identification of a large number of products. Subject to and
17 without waiving the foregoing general and specific objections, Defendant responds as follows:
18 Defendant does no engineering design work. (Ex. 6).

19 Response to Interrogatory No. 3: (by Matrox Tech) Defendant incorporates by reference its
20 General and Specific Objections. Defendant further objects to this interrogatory as unduly
21 burdensome and seeking discovery of information regarding design processes that have no
22 relationship to ASIC design and are not reasonably calculated to lead to the discovery of
23 admissible evidence. Defendant designs and manufactures a large number of products and
24 employs a large number of personnel involved in product design. Plaintiff has not identified any
25 theory of infringement or which specific design step(s) or activities are relevant to its allegations
26 of infringement, or what activities Plaintiff considered during the reasonable pre-filing
27 investigation, if any, that it conducted prior to filing the present lawsuit. To answer the
28 interrogatory as drafted, therefore, might require a narrative describing every design step
performed by every employee who had any involvement in design work on any product that
includes an integrated circuit. Subject to and without waiving the foregoing general and specific
objections, Defendant responds as follows: Defendant has ceased operations. (Ex. 7).

Interrogatory No. 3 is proper and the objections made are not valid. The plaintiff is entitled
to know all of the steps or other activities making up the ASIC Method used to design the ASIC product.
This information is directly relevant to a determination of infringement. While Ricoh has not asserted
that any particular equipment itself constitutes patent infringement, what the defendants do with such
equipment is relevant to a determination of whether or not there is patent infringement.

As stated in regard to Interrogatory No. 1, Defendants' answer is non-responsive under Fed.
R. Civ. P. 33(b)(1) because Defendants are required to "state the reasons for objection and shall answer
to the extent the interrogatory is not objectionable." As further clarified by the Advisory Committee

notes, Defendants are required to answer, at least to an extent not objectionable (e.g. a lesser number of facilities or products), along with stating their specific objections. Defendants have simply again made a blanket objection and produced absolutely no information in response to Interrogatory No. 3.

As indicated above, Ricoh has further narrowed key terms and attempted to resolve differences between the parties for the discovery process, which could limit the responses required by defendants. Further, the claim of the Canadian Matrox defendants that activities in Canada are not relevant is not valid in light of § 271. The allegation that Matrox Tech has ceased operations does not absolve it of its responsibility to provide information regarding past behavior.

4. Interrogatory No. 4: Individuals Participating In Manufacture Or Sale Of ASIC Products

Interrogatory No. 4: Separately for each product identified in answer to Interrogatory No. 2, identify each individual (including their job title and description) involved in any way (including but not limited to managerial responsibility) in research and development, design, manufacturing, testing, sales, or marketing of, or in the decision to design, develop, or manufacture that product, and describe their activity concerning such involvement.

Response to Interrogatory No. 4: (by Aeroflex and AMI) Defendant incorporates by reference its General Objections. Defendant further objects to this interrogatory as unduly burdensome and seeking discovery of information regarding design processes that have no relationship to ASIC design and are not reasonably calculated to lead to the discovery of admissible evidence. Defendant designs and manufactures a large number of products and employs a large number of personnel involved in product design. Plaintiff has not identified any theory of infringement or which design step(s) or activities are relevant to its allegations of infringement or what activities Plaintiff considered during the reasonable pre-filing investigation, if any, that it conducted prior to filing the present lawsuit. To answer the interrogatory as drafted, therefore, might require a narrative describing the functions performed by each employee who had any involvement in design work on any product that includes an integrated circuit. (Ex. 2, 3).

Response to Interrogatory No. 4: (Similar responses by Matrox Elec., Matrox Graphics) Defendant incorporates by reference its General and Specific Objections. Defendant further objects to this interrogatory as unduly burdensome and seeking discovery of information regarding design processes that have no relationship to ASIC design and are not reasonably calculated to lead to the discovery of admissible evidence. Defendant designs and manufactures a large number of products and employs a large number of personnel involved in product design. Plaintiff has not identified any theory of infringement or which specific design step(s) or activities are relevant to its allegations of infringement, or what activities Plaintiff considered during the reasonable pre-filing investigation, if any, that it conducted prior to filing the present lawsuit. To answer the interrogatory as drafted, therefore, might require a narrative describing the functions performed by each employee who had any involvement in design work on any product that includes an integrated circuit.

1 Defendant further objects that the design work for its products, including the design work on
2 Defendant's ASICs, performed at Defendant's facilities in Canada is not relevant to Ricoh's
3 allegation of infringement. Design of ASICs or other electronic systems and devices done in
4 Canada could not constitute infringement under any provision of 35 U.S.C. § 271, of a United
5 States Patent. Subject to and without waiving the foregoing general and specific objections,
6 Defendant responds as follows: Defendant does no engineering design work in the United
7 States. (Ex. 4, 5)

8 Response to Interrogatory No. 4: (by Matrox Int'l) Defendant incorporates by reference its
9 General and Specific Objections. Defendant further objects to this interrogatory as unduly
10 burdensome, seeks discovery regarding semiconductor products having no relationship to any
11 infringement allegations made by Ricoh against Defendant, and not reasonably calculated to
12 lead to the discovery of admissible evidence. Defendant further objects to this interrogatory as
13 overly broad and unduly burdensome on the grounds that Defendant sells a large number of
14 products. Plaintiff has not identified any theory of infringement or which specific design step(s)
15 or activities are relevant to its allegations of infringement, or what activities Plaintiff considered
16 during the reasonable pre-filing investigation, if any, that it conducted prior to filing the present
17 lawsuit. To answer the interrogatory as drafted, therefore, would require examination and
18 identification of a large number of products. Subject to and without waiving the foregoing
19 general and specific objections, Defendant responds as follows: Defendant will not respond to
20 this interrogatory. (Ex. 6).

21 Response to Interrogatory No. 4: (by Matrox Tech) Defendant incorporates by reference its
22 General and Specific Objections. Defendant further objects to this interrogatory as unduly
23 burdensome and seeking discovery of information regarding design processes that have no
24 relationship to ASIC design and are not reasonably calculated to lead to the discovery of
25 admissible evidence. Defendant designs and manufactures a large number of products and
26 employs a large number of personnel involved in product design. Plaintiff has not identified any
27 theory of infringement or which specific design step(s) or activities are relevant to its allegations
28 of infringement, or what activities Plaintiff considered during the reasonable pre-filing
investigation, if any, that it conducted prior to filing the present lawsuit. To answer the
interrogatory as drafted, therefore, might require a narrative describing the functions performed
by each former employee who had any involved [sic] in design work on any product that
includes an integrated circuit. Subject to and without waiving the foregoing general and specific
objections, Defendant responds as follows: Defendant has ceased operations. (Ex. 7).

Interrogatory No. 4 is proper and the objections made are not valid. The plaintiff is entitled
to know which individuals were involved in research and development, design, manufacturing, testing,
sales, or marketing of, or in the decision to design, develop, or manufacture the ASIC product referred to
in Interrogatory No. 2. This information is relevant to a determination of infringement and establishing
individuals likely to have discoverable information.

As stated in regard to Interrogatory No. 1, Defendants' answer is non-responsive under Fed.
R. Civ. P. 33(b)(1) because Defendants are required to "state the reasons for objection and shall answer

1 to the extent the interrogatory is not objectionable.” As further clarified by the Advisory Committee
 2 notes, Defendants are required to answer, at least to an extent not objectionable (e.g. a lesser number of
 3 facilities or products), along with stating their specific objections. Defendants have simply again made a
 4 blanket objection and produced absolutely no information in response to Interrogatory No. 4.

5 **5. Interrogatory No. 5: Individuals Performing ASIC Methods**

6 Interrogatory No. 5: Separately for each product identified in answer to Interrogatory No. 2,
 7 identify each individual (including their job title and description) who participated in any way in
 8 performing an ASIC Method for that product, and describe all of the acts of each individual that
 contributed to performing the ASIC Method for that product.

9 Response to Interrogatory No. 5: (by Aeroflex, AMI) Defendant incorporates by reference its
 10 General Objections. Defendant further objects to this interrogatory as unduly burdensome and
 11 seeking discovery of information regarding design processes that have no relationship to ASIC
 12 design and are not reasonably calculated to lead to the discovery of admissible evidence.
 13 Defendant designs and manufactures a large number of products and employs a large number of
 14 personnel involved in product design. Plaintiff has not identified any theory of infringement or
 15 which design step(s) or activities are relevant to its allegations of infringement or what activities
 Plaintiff considered during the reasonable pre-filing investigation, if any, that it conducted prior
 to filing the present lawsuit. The interrogatory as drafted, therefore, calls for an open-ended
 narrative describing the functions performed by any employee having any role in the computer-
 aided design of any product that includes an integrated circuit. (Ex. 2,3).

16 Response to Interrogatory No. 5: (Similar responses by Matrox Elec., Matrox Graphics)
 17 Defendant incorporates by reference its General and Specific Objections. Defendant further
 18 objects to this interrogatory as unduly burdensome and seeking discovery of information
 19 regarding design processes that have no relationship to ASIC design and are not reasonably
 20 calculated to lead to the discovery of admissible evidence. Defendant designs and manufactures
 21 a large number of products and employs a large number of personnel involved in product design.
 22 Plaintiff has not identified any theory of infringement or which specific design step(s) or
 activities are relevant to its allegations of infringement, or what activities Plaintiff considered
 during the reasonable pre-filing investigation, if any, that it conducted prior to filing the present
 lawsuit. To answer the interrogatory as drafted, therefore, might require a narrative describing
 the functions performed by each employee who had any involvement in design work on any
 product that includes an integrated circuit.

23 Defendant further objects that the design work for its products, including the design work on
 24 Defendant’s ASICs, performed at Defendant’s facilities in Canada is not relevant to Ricoh’s
 25 allegation of infringement. Design of ASICs or other electronic systems and devices done in
 26 Canada could not constitute infringement under any provision of 35 U.S.C. § 271, of a United
 States Patent. Subject to and without waiving the foregoing general and specific objections,
 Defendant responds as follows: Defendant does no engineering design work in the United
 States. (Ex. 4, 5)

27 Response to Interrogatory No. 5: (by Matrox Int’l) Defendant incorporates by reference its
 28 General and Specific Objections. Defendant further objects to this interrogatory as unduly
 burdensome, seeks discovery regarding semiconductor products having no relationship to any

1 infringement allegations made by Ricoh against Defendant, and not reasonably calculated to
2 lead to the discovery of admissible evidence. Defendant further objects to this interrogatory as
3 overly broad and unduly burdensome on the grounds that Defendant sells a large number of
4 products. Plaintiff has not identified any theory of infringement or which specific design step(s)
5 or activities are relevant to its allegations of infringement, or what activities Plaintiff considered
6 during the reasonable pre-filing investigation, if any, that it conducted prior to filing the present
7 lawsuit. The interrogatory as drafted, therefore, calls for an open ended narrative describing the
8 functions performed by any employee having any role in the computer-aided design of a large
9 number of products. Subject to and without waiving the foregoing general and specific
10 objections, Defendant responds as follows: Defendant does not engineering design work. (Ex.
11 6).

12 Response to Interrogatory No. 5: (by Matrox Tech) Defendant incorporates by reference its
13 General and Specific Objections. Defendant further objects to this interrogatory as unduly
14 burdensome and seeking discovery of information regarding design processes that have no
15 relationship to ASIC design and are not reasonably calculated to lead to the discovery of
16 admissible evidence. Defendant designs and manufactures a large number of products and
17 employs a large number of personnel involved in product design. Plaintiff has not identified any
18 theory of infringement or which specific design step(s) or activities are relevant to its allegations
19 of infringement, or what activities Plaintiff considered during the reasonable pre-filing
20 investigation, if any, that it conducted prior to filing the present lawsuit. The interrogatory as
21 drafted, therefore, calls for an open-ended narrative describing the functions performed by any,
22 now former, employee who had any role in the computer aided design of any product that
23 includes an integrated circuit. Subject to and without waiving the foregoing general and specific
24 objections, Defendant responds as follows: Defendant has ceased operations. (Ex. 7).

25 Interrogatory No. 5 is proper and the objections made are not valid. The plaintiff is entitled
26 to know which individuals participated in any way in performing an ASIC Method for the product
27 referred to in Interrogatory No. 2. This information is relevant to a determination of infringement and
28 establishing individuals likely to have discoverable information.

As stated in regard to Interrogatory No. 1, Defendants' answer is non-responsive under Fed.
R. Civ. P. 33(b)(1) because Defendants are required to "state the reasons for objection and shall answer
to the extent the interrogatory is not objectionable." As further clarified by the Advisory Committee
notes, Defendants are required to answer, at least to an extent not objectionable (e.g. a lesser number of
facilities or products), along with stating their specific objections. Defendants have simply again made a
blanket objection and produced absolutely no information in response to Interrogatory No. 5.

1 **6. Interrogatory No. 6: Awareness Of The Patent-In-Suit**

2 Interrogatory No. 6: State when, from whom and under what circumstances defendant first
 3 became aware of the patent-in-suit, and identify all documents and communications relating
 4 thereto, including but not limited to any opinion(s) concerning the patent-in-suit.

5 Response to Interrogatory No. 6: Defendant incorporates by reference its General Objections.
 6 Defendant further objects to this interrogatory to the extent that it calls for the disclosure of
 7 information protected by the attorney-client privilege. Subject to and without waiving the
 8 foregoing general and specific objections, Defendant responds as follows: Defendant first
 9 became aware of the patent-in-suit upon receipt of the complaint in this lawsuit. (Ex. 2-7).

10 The response to Interrogatory No. 6 ignores the request for identification of all documents
 11 and communications. Such identification is not privileged information even if the content of those
 12 documents and communications may be privileged. Fed. R. Civ. P. 26(b)(5) states, in part, “when a
 13 party withholds information otherwise discoverable under these rules by claiming that it is privileged or
 14 subject to protection as trial preparation material, the party shall make the claim expressly and shall
 15 describe the nature of the documents, communications or things not produced or disclosed in a manner
 16 that, without revealing information itself privileged or protected, will enable other parties to assess the
 17 applicability of the privilege or protection.”

18 As discussed above, a “blanket” objection based on privilege is improper. Improper
 19 assertion of the privilege by not complying with the requirement to specifically identify the documents
 20 and communications that are allegedly privileged can result in a waiver of the privilege. *Eureka*
 21 *Financial Corp. v. Hartford Accident and Indemnity Company*, 136 F.R.D. 179 (E.D. Cal. 1991).
 22 Defendants must “expressly claim the privilege and describe the nature of the documents” and “failure
 23 to do so may constitute an ‘implied’ waiver of the privilege or protection.” *Imperial Corp. v. Shields*,
 24 174 F.R.D. 475, 477 (S.D. Cal. 1997). Defendants have provided no basis for their objections based on
 25 privilege and have provided no privilege log identifying any protected confidential communications,
 26 which were not disclosed in answering the Interrogatories.
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 28

7. Interrogatory No. 7: Information Concerning The Contents Of The Response To The Complaint

Interrogatory No. 7: Separately for each of the paragraphs of the response to the Complaint in this action by the defendant responding to this inquiry, identify all individuals having knowledge or information concerning the contents of such paragraph and identify the documents on which such response is based.

(Similar responses by all defendants:)

Response to Interrogatory No. 7: Defendant incorporates by reference its General Objections. Defendant further objects to this interrogatory on the ground that it contains impermissible subparts. *See* D. Del. LR 26.1(b). By propounding an interrogatory that requires Defendant to state all factual bases and identify all individuals or documents concerning the allegations made in 50 separate paragraphs, Ricoh has in fact served 100 separate interrogatories and far exceeded the 50-interrogatory limit. *See id.* *See Lawrence v. First Kansas Bank & Trust Co.*, 169 F.R.D. 657, 660-61 (D. Kan. 1996); *Kendall v. GES Exposition Services, Inc.*, 174 F.R.D. 684, 685-86 (D. Nev. 1997). Defendant further objects to this interrogatory on the ground that it is premature. Defendant has just begun to conduct its investigation of the relevant facts. The factual bases and documents supporting each of Defendant's contentions addressed in this interrogatory will become known through fact and expert discovery. Defendant further objects to this interrogatory to the extent that it seeks the disclosure of information or the identification of documents that are protected from discovery by the attorney-client privilege and/or the attorney work product doctrine. Defendant further objects to this interrogatory on the basis that it seeks identification of "all persons" having knowledge of the facts set out in Defendant's response to the Complaint in this action. To identify each person employed by or associated with Defendant and having such knowledge would be unreasonably burdensome. Subject to and without waiving the foregoing general and specific objections, Defendant responds as follows: James Davis has information regarding Defendant's equitable defenses. Hideaki Kobayashi and Masahiro Shindo have information regarding the invalidity of the asserted patents. (Ex. 2-7).

(Additional Response to Interrogatory No. 7: by Matrox Elec.) Erik Boisvert has knowledge regarding the location of Defendant's design facilities.

(Additional Response to Interrogatory No. 7: by Matrox Graphics) Ed Dwyer has knowledge regarding the location of Defendant's design facilities. Mr. Wood is an employee of one of the defendants in the present action and should not be contacted except through counsel for the defendant.

(Additional Response to Interrogatory No. 7: by Matrox Int'l) Edward Dwyer has knowledge regarding the location of Defendant's design facilities. Mr. Dwyer is an employee of one of the defendants in the present action and should not be contacted except through counsel for the defendant.

(Additional Response to Interrogatory No. 7: by Matrox Tech) Defendant has ceased operations. Edward Dwyer has knowledge regarding the location of Defendant's design facilities. Mr. Dwyer is an employee of one of the defendants in the present action and should not be contacted except through counsel for the defendant.

1 Interrogatory No. 7 is a single inquiry and since it asks for the individuals having knowledge
2 or information of representations actually made by the Defendants in their response to the Complaint,
3 the Interrogatory is certainly not premature or burdensome. The identification of individuals who know
4 the location of the design facilities is essentially is not responsive. Neither the identification of the
5 individuals nor the identity of the documents is privileged. The Defendants have not identified even a
6 single individual employed by or associated with Defendants, and to implicitly assert the Answer to the
7 Complaint was prepared without any investigation involving personnel of the Defendants suggests a
8 violation of Rule 11.
9

10 Also, while Ricoh disagrees with the assertion that interrogatory 7 exceeds the 50
11 interrogatory limit, Plaintiff was willing to limit the interrogatory to those paragraphs of defendants'
12 answer and counterclaims which constitute a denial per se (i.e., other than a denial based on a lack of
13 knowledge and information), the affirmative defense paragraphs and paragraphs 69 and 72 of the
14 counterclaims. (Ex. 9, E. Meilman 8/26/03 letter).

15 Fed. R. Civ. P. 26(b)(5) states, in part, "when a party withholds information otherwise
16 discoverable under these rules by claiming that it is privileged or subject to protection as trial
17 preparation material, the party shall make the claim expressly and shall describe the nature of the
18 documents, communications or things not produced or disclosed in a manner that, without revealing
19 information itself privileged or protected, will enable other parties to assess the applicability of the
20 privilege or protection."
21

22 As discussed above, a "blanket" objection based on privilege is improper. Improper
23 assertion of the privilege by not complying with the requirement to specifically identify the documents
24 or information that is allegedly privileged can result in a waiver of the privilege. *Eureka Financial*
25 *Corp. v. Hartford Accident and Indemnity Company*, 136 F.R.D. 179 (E.D. Cal. 1991). Defendants
26 must "expressly claim the privilege and describe the nature of the documents" and "failure to do so may
27 constitute an 'implied' waiver of the privilege or protection." *Imperial Corp. v. Shields*, 174 F.R.D. 475,
28

477 (S.D. Cal. 1997). Defendants have provided no basis for their objections based on privilege and have provided no privilege log identifying any protected confidential communications, which were not disclosed in answering the Interrogatories.

Defendants have provided no reasoning as to why any documents or communications should receive protection under the work product doctrine or what specific documents or communications would be covered under the work product doctrine. Fed. R. Civ. P. 26(b)(3) states that work product protection only applies to documents and tangible things prepared by a party “in anticipation of litigation.” The party seeking protection from the work product doctrine “bears the burden of establishing that any documents claimed as work product were prepared in anticipation of litigation.” *Newport Pacific Inc. v. County of San Diego*, 200 F.R.D. 628, 632 (S.D. Cal. 2001). Defendants have not established any documents or communications with particularity that should be protected under work product doctrine nor have they shown that any of the information requested was prepared in anticipation of litigation.

8. Interrogatory No. 8: Marketing And Sales Activities

Interrogatory No. 8: Separately for each product identified in answer to Interrogatory No. 2, identify each individual who can testify about defendant's marketing activities, including but not limited to market research, product testing, business planning, sales, advertising, and production for that product.

Response to Interrogatory No. 8: (by Aeroflex, AMI) Defendant incorporates by reference its General and Specific Objections. Defendant incorporates by reference its response to Interrogatory No. 2. (Ex.2, 3).

Response to Interrogatory No. 8: (by Matrox Elec.) Defendant incorporates by reference its General and Specific Objections. Defendant further objects to this interrogatory as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing general and specific objections, Defendant responds as follows: Francois Bertrand Erik Boisvert. Mr. Bertrand and Mr. Boisvert are employees of defendant and should not be contacted except through counsel for the defendant. (Ex.4).

Response to Interrogatory No. 8: (by Matrox Graphics, Matrox Int'l.) Defendant incorporates by reference its General and Specific Objections. Defendant further objects to this interrogatory as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing general and specific objections, Defendant responds as follows: Dan Wood, Edward Dwyer. Mr. Wood and Mr.

1 Dwyer are employees of defendant and should not be contacted except through counsel for the
2 defendant. (Ex.5, 6).

3 Response to Interrogatory No. 8: (by Matrox Tech) Defendant incorporates by reference its
4 General and Specific Objections. Defendant further objects to this interrogatory as overly broad,
5 unduly burdensome and not reasonably calculated to lead to the discovery of admissible
6 evidence. Subject to and without waiving the foregoing general and specific objections,
7 Defendant responds as follows: Dan Wood. Mr. Wood is an employees of one of defendants in
8 the present action and should not be contacted except through counsel for the defendant. (Ex.7).

9 Interrogatory No. 8 is proper and the objections made are not valid. Any cost savings are
10 relevant to issues of damages and potentially issues of non-obviousness. The Plaintiff is entitled to
11 know about Defendants' marketing activities including market research, product testing, business
12 planning, sales, advertising, and production for the ASIC product referred to in Interrogatory 2. This
13 information is directly relevant to damages. While Ricoh has not asserted that any particular equipment
14 constitutes patent infringement, what the defendants do with the type of equipment used is relevant to a
15 determination of whether or not there is patent infringement.

16 As stated in regard to Interrogatory No. 1, Defendants' answer is non-responsive under Fed.
17 R. Civ. P. 33(b)(1) because Defendants are required to "state the reasons for objection and shall answer
18 to the extent the interrogatory is not objectionable." As further clarified by the Advisory Committee
19 notes, Defendants are required to answer, at least to an extent not objectionable (e.g. a lesser number of
20 facilities or products), along with stating their specific objections. Defendants have simply again made a
21 blanket objection and produced absolutely no information in response to Interrogatory No. 8.

22 **9. Interrogatory No. 9: Document And Records Processing, Storage And 23 Retention**

24 Interrogatory No. 9: Describe defendant's procedures, facilities and policies for generating,
25 maintaining, retaining and destroying records and the types of data processing and storage
26 systems maintained by defendant, and identify all documents relating to or referring to such
27 procedures, policies and systems and all persons having knowledge thereof.

28 Response to Interrogatory No. 9: Defendant incorporates by reference its General Objections.
Subject to and without waiving the foregoing general and specific objections, Defendant
responds as follows: Pursuant to FRCP Rule 33(d), Defendant will produce non-privileged
business records for policies regarding the retention or destruction of documents that are
responsive to this interrogatory and contain the requested information to the extent such records
currently exist within Defendant's possession, custody or control. (Ex. 2-7).

1 Production of documents under Fed. R. Civ. P. 33(d) as a response to an Interrogatory is not
 2 proper unless a "specification shall be in sufficient detail to permit the interrogating party to locate and
 3 to identify, as readily as can the party served, the records from which the answer may be ascertained."
 4 The Rule is predicated on the burden being equal and the burden on Defendants is less in this case. To
 5 date, Defendants have only produced a few documents responsive to this Interrogatory.
 6

7 **10. Interrogatory No. 10: Requests For Admission**

8 Interrogatory No. 10: In the event that any request for admission is denied in whole or in part,
 9 identify the request by number and set forth in detail each and every reason of the denial,
 10 including the identity of the documents upon which such denial is based.

11 Response to Interrogatory No. 10: (similar responses by all defendants) Defendant incorporates
 12 by reference its General Objections. Defendant further objects to this interrogatory on the
 13 ground that it contains impermissible subparts. See D. Del. LR 26.1(b). Defendant further
 14 objects to this interrogatory on the ground that it is premature. Discovery in this case has just
 15 recently begun. Defendant will make available additional information regarding the factual
 16 bases for its contentions at a later point during discovery. Subject to and without waiving the
 17 foregoing general and specific objections, Defendant responds as follows: Where Defendant
 18 denied Ricoh's Requests for Admission, it did so because these Requests for Admission were
 19 false. Regarding requests for admission involving the validity and enforceability of the patents:
 20 Defendant is aware of a number of invalidating prior art references which will be produced;
 21 detailed contentions regarding specific references will be supplied at an appropriate time during
 22 discovery. Regarding requests relating to equitable defenses: the '432 patent issued on May 1,
 23 1990; Ricoh filed this complaint in January 2003; agents of the inventors and assignees made
 24 previous attempts to license this patent that were abandoned. Regarding requests relating to
 25 construction of specific elements of claim language and practice of those claim elements: the
 26 claims of the '432 patent refer to a particular design process not employed by Defendant;
 27 Defendant, is the beneficiary of equitable defenses included laches, equitable estoppel and an
 28 implied license and, as a licensed user of Synopsys design synthesis software, is the beneficiary
 of the equitable defenses that Synopsys has against assertion of the '432 patent. Defendant
 reserves the right to identify additional grounds for its contentions and additional evidence as
 discovery develops. (Ex. 2-7).

23 Response to Interrogatory No. 10: (additional responses by Matrox Elec., Matrox Graphics)
 Regarding requests relating to construction of specific elements of claim language and practice
 of those claim elements: Defendant does not engage in any engineering design activities in the
 United States, Defendant does not sell any products in the United States....Regarding requests
 relating to personal jurisdiction; Defendant has no personnel in Delaware, conducts no business
 operations in Delaware and makes no direct sales in Delaware. (Ex. 4, 5)

26 Response to Interrogatory No. 10: (additional response by Matrox Int'l) Regarding requests
 relating to construction of specific elements of claim language and practice of those claim
 elements: Defendant does not engage in any engineering design activities,Regarding requests

1 relating to personal jurisdiction; Defendant has no personnel in Delaware, conducts no business
2 operations in Delaware and makes no direct sales in Delaware. (Ex. 6)

3 Response to Interrogatory No. 10: (additional response by Matrox Tech) Regarding requests
4 relating to construction of specific elements of claim language and practice of those claim
5 elements: Defendant does not engage in any engineering design activities, Defendant does not
6 sell any products in the United States. (Ex. 7)

7 The response to Interrogatory No. 10 to the extent it constitutes a bald statement that the
8 Request for Admissions were made because the Request was false are improper. Plaintiff is entitled to
9 know the basis for the Defendants' response to the Interrogatory and the bald assertion that their Request
10 is false does not set forth in detail each and every reason for the denial. Stating that a Defendant is
11 aware of a number of invalidating prior art references without identifying them is improper. Stating that
12 agents of the inventors and assignees made previous attempts to license the patents that were abandoned
13 is improper because it does not identify who the agents were, when the attempts were made, and/or the
14 individuals to whom these attempts were made. At a minimum, defendants should provide the
15 information required under F.R.Civ.P. 36 to state a basis for their denial. Although defendants claim the
16 number is excessive (notwithstanding the fact that Delaware does not have a local rule corresponding to
17 N.D. Cal. L.R. 33-2), defendants waive their objection by attempting to provide an incomplete response.
18 Defendants cannot object and provide a non-responsive answer at the same time.
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CONCLUSION

Ricoh's motion to compel should be granted. The ASIC Defendants should be required to provide responsive and complete answers to Plaintiff's First Set of Interrogatories.

Dated: November 10, 2003

Respectfully Submitted,

GARY M. HOFFMAN
KENNETH W. BROTHERS
EDWARD A. MEILMAN
Dickstein Shapiro Morin & Oshinsky, LLP

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